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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,092	10/14/2003	Paul Appelbaum		5503

7590 07/15/2008  
Paul Appelbaum  
16371 Wimbledon Lane  
Huntington Beach, CA 92649

EXAMINER
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REYNOLDS, STEVEN ALAN

ART UNIT	PAPER NUMBER
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3728

MAIL DATE	DELIVERY MODE
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07/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/685,092	APPELBAUM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven Reynolds	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 January 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

Election Restriction of 10/4/2007 has been withdrawn and is applied concurrently with this action.

### ***Election/Restrictions***

1. Applicant's election without traverse of Species 1 (Figures 1-5) on 5/19/2008 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the outer perimeter" in lines 5 and 11.

Claim 1 recites the limitation "the outer edge" in lines 6 and 13.

Claim 1 recites the limitation "the upper part" in line 7.

There is insufficient antecedent basis for these limitations in the claim.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3728

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

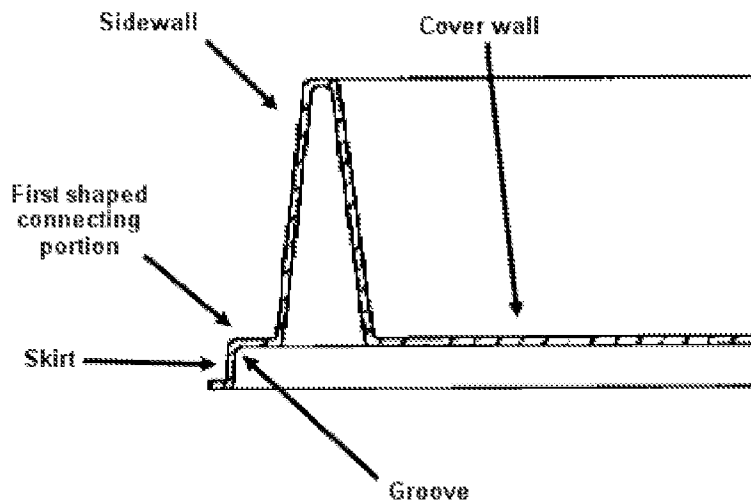
obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

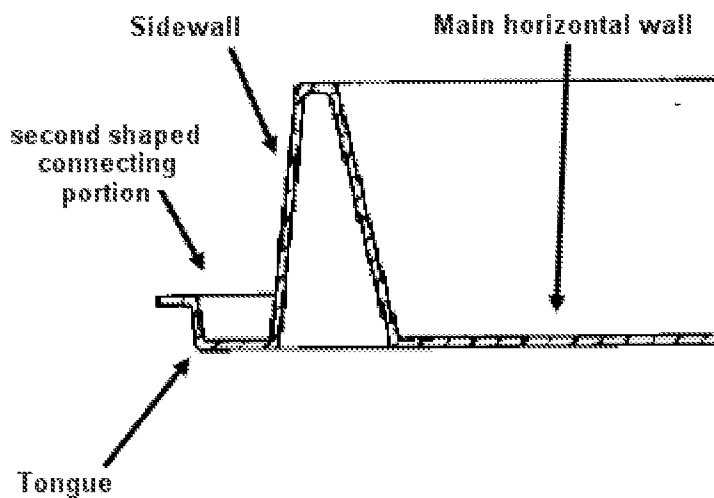
6. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Christen (US 2004/0099560) in view of Kim (US 6,415,947). Christen discloses a plastic package for securing and displaying small articles of commerce, said package

including: a lid (16) having a generally flat cover wall (20); a generally vertical bifurcated sidewall bounding said cover wall; a first shaped connecting portion extending along an outer perimeter of said vertical sidewall; a skirt portion extending downwardly along an outer edge of said first connecting portion (See portion of FIG. 6 shown below).



a bottom (14) having a main horizontal wall; a generally vertical bifurcated sidewall bounding said main wall; a second shaped connecting portion extending along an outer perimeter of said bottom sidewall and shaped to mate with said first connecting portion (See portion of FIG. 5 shown below).



As described above, Christen discloses the claimed invention except for the indent and outwardly projecting locking edge. However, Kim teaches a plastic package comprising a lid (2) including a shaped connecting portion comprising an indent (7a)

extending along an upper part of a skirt portion (adjacent groove 11 in Fig. 2); and a bottom (3) including a outwardly projecting locking edge (portion 10 that extends through the indent) along an outer part of a shaped connecting portion for the purpose of locking the lid to the bottom portion. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shaped connecting portions of Christen to include an indent and an outwardly extending locking edge as taught by Kim in order to more securely lock the lid portion to the bottom portion.

Regarding claims 2-10, Christen-Kim discloses said locking edge includes a plurality of spaced apart tabs (10) and said indent includes slots (7a,7b) for receiving said tabs; aid lid sidewall has an inverted V shape, and said bottom sidewall has an upright V shape (See Christen FIG. 7); said first shaped connecting portion comprises a groove and said second shaped portion comprises a tongue (See figures shown above); said bottom main wall and lid cover wall have a shaped cavity for receiving an article of commerce (See Christen FIG. 7); said cover wall lies flush against said bottom main wall when said lid is secured to said bottom; and said lid and bottom are generally rectangular.

Regarding claims 11 and 12, Christen-Kim discloses the claimed invention except for the specific shape of the lid and bottom. To modify the lid and bottom portions to be circular as claimed would entail a mere change in shape of the lid and bottom portions and yield only predictable results. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it

would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." KSR Int'l v. Teleflex Inc., 127 S.Ct. 1740, 82 USPQ2d 1396 (2007). A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

7. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christen (US 2004/0099560) in view of Bostic (US 4,545,486). Christen discloses a plastic package for securing and displaying small articles of commerce, said package including: a lid (16) having a generally flat cover wall (20); a generally vertical bifurcated sidewall bounding said cover wall; a first shaped connecting portion extending along an outer perimeter of said vertical sidewall; a skirt portion extending downwardly along an outer edge of said first connecting portion (See portion of FIG. 6 shown above); a bottom (14) having a main horizontal wall; a generally vertical bifurcated sidewall bounding said main wall; a second shaped connecting portion extending along an outer perimeter of said bottom sidewall and shaped to mate with said first connecting portion (See portion of FIG. 5 shown above).

As described above, Christen discloses the claimed invention except for the indent and outwardly projecting locking edge. However, Bostic teaches a plastic package comprising a lid (14) including a shaped connecting portion comprising an indent (21) extending along an upper part of a skirt portion; and a bottom (12) including a outwardly projecting locking edge (element 17 extend into the indent) along an outer

part of a shaped connecting portion for the purpose of locking the lid to the bottom portion. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the shaped connecting portions of Christen to include an indent and an outwardly extending locking edge as taught by Bostic in order to more securely lock the lid portion to the bottom portion.

Regarding claims 2-10, Christen-Bostic discloses said locking edge includes a plurality of spaced apart tabs (17) and said indent includes slots (21) for receiving said tabs; aid lid sidewall has an inverted V shape, and said bottom sidewall has an upright V shape (See Christen FIG. 7); said first shaped connecting portion comprises a groove and said second shaped portion comprises a tongue (See figures shown above); said bottom main wall and lid cover wall have a shaped cavity for receiving an article of commerce (See Christen FIG. 7); said cover wall lies flush against said bottom main wall when said lid is secured to said bottom; and said lid and bottom are generally rectangular.

Regarding claims 11 and 12, Christen-Bostic discloses the claimed invention except for the specific shape of the lid and bottom. To modify the lid and bottom portions to be circular as claimed would entail a mere change in shape of the lid and bottom portions and yield only predictable results. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." *KSR Int 'l v. Teleflex Inc.*, 127 S.Ct. 1740, 82 USPQ2d 1396 (2007). A change in form or shape is generally recognized as



being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mickey Yu/  
Supervisory Patent Examiner, Art  
Unit 3728

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/S. R./  
Examiner, Art Unit 3728